

HOUSE No. 623

By Mr. Travis of Rehoboth, petition of Philip Travis relative to shared custody of minor children of divorced or separated parents. The Judiciary.

The Commonwealth of Massachusetts

In the Year Two Thousand and Five.

AN ACT RELATIVE TO SHARED CUSTODY.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 Section 31 of Chapter 208 of the General Laws, as appearing in
2 the 1996 Official Edition, is hereby amended by striking out the
3 fifth paragraph, beginning in line 19, through the twelfth para-
4 graph, beginning in line 70, and inserting in place thereof the
5 following new paragraphs:—

6 To ensure minor children of frequent and continuing contact
7 and a meaningful relationship with both parents after the parents
8 have separated and divorced, it becomes necessary to encourage
9 parents to share in the rights and responsibilities of child care and
10 rearing. Primary considerations in awarding custody shall be
11 given to both parents jointly in order to secure the best interest of
12 the children by providing continuation of parent-child relation-
13 ships. It is therefore the presumption of the courts that in most
14 cases shared custody should be considered paramount to ensure
15 the happiness and welfare of the children.

16 In all separation and divorce proceedings involving minor chil-
17 dren, it shall be a presumption of the court that both parents have
18 an inalienable right to share temporary and final legal as well as
19 physical custody of the children unless one or both parents (1) are
20 proven to be unfit to such an extent and in such a manner as to
21 cause immediate physical or emotional danger or damage to the
22 children, (2) abandon the children, or (3) voluntarily relinquish cus-
23 tody. An agreement signed by both parents defining the shared

24 arrangements shall be the order of the courts, provided the parents
25 have been apprised of their custody rights or unless clear and con-
26 vincing findings indicate that such an order would not be in the
27 best interest of their children.

28 Only after the parents have attempted and failed to reach an
29 agreement on the shared living arrangements of the children shall
30 the court determine the shared arrangements. The children shall
31 also have the right to reside and spend an equal amount of time
32 with each parent, provided this sharing arrangement does not
33 interfere nor disrupt the school term. If equal time is neither prac-
34 tical nor possible, the right of one parent to a minimum guaran-
35 teed amount of time per year with the children shall be established
36 and protected by the courts.